

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROBERT LEE CHILDRESS,

Petitioner,

Case Number: 2:12-CV-14284

v.

HON. LAWRENCE P. ZATKOFF

RAYMOND BOOKER,

Respondent.

**OPINION AND ORDER DISMISSING PETITION FOR WRIT OF
HABEAS CORPUS AND DENYING PETITIONER'S MOTION FOR STAY**

Petitioner filed a *pro se* habeas petition under 28 U.S.C. § 2241. At the time he filed his petition, Petitioner was a Michigan state prisoner serving two concurrent state sentences, upon completion of which he was to be released to federal custody to serve a 36-month term of imprisonment. Petitioner argued in the petition that his Federal sentence should run concurrent to his state court sentence. On November 20, 2012, the Court summarily dismissed Petitioner's application for a writ of habeas corpus without prejudice for failure to exhaust state court remedies. Petitioner filed a notice of appeal. Two months after the Court summarily dismissed the petition, the Sixth Circuit Court of Appeals held that exhaustion in the context of a § 2241 petition is an affirmative defense and may not form the basis for dismissing a petition at the screening stage. *Luedtke v. Berkebile*, 704 F.3d 465 (6th Cir. 2013). In light of this decision, the Court granted a certificate of appealability. The Sixth Circuit Court of Appeals held that, although the petition was not properly dismissed on exhaustion grounds, it was subject to summary dismissal on the ground that the issue raised was already decided by the Court of Appeals in a prior proceeding. *Childress*

v. Booker, No. 12-2623 (6th Cir. Nov. 1, 2013). The Court of Appeals remanded the case with instructions to dismiss the petition. The mandate has now issued and the Court will dismiss the petition in accordance with the Court of Appeals' decision.

Also before the Court is Petitioner's Motion for Stay. Petitioner asks the Court to stay execution of his Federal sentence pending his appeal. The appeal has concluded and the Sixth Circuit Court of Appeals has denied Petitioner's challenge to the consecutive nature of his Federal sentence. This motion will be denied as moot.

IT IS ORDERED that the petition for a writ of habeas corpus is **DISMISSED WITH PREJUDICE** and the Motion for Stay [dkt. # 12] is **DENIED**.

S/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: February 11, 2014